

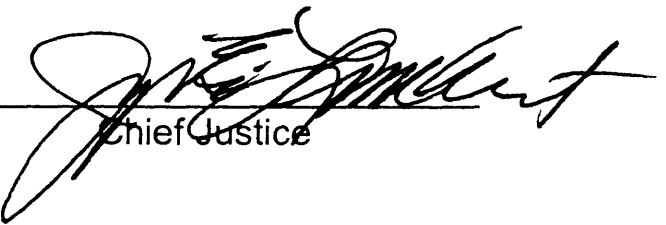
Supreme Court of Kentucky

ORDER

Pursuant to KRS 533.250, signed into law in May, 1998, the Pretrial Diversion Program for Class D Felons submitted by the Powell Circuit Court (which is part of the 39th Judicial Circuit) is hereby approved by the Kentucky Supreme Court and added to the Circuit's local rules.

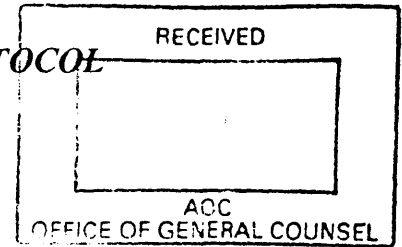
Entered: _____

12/16/99



Chief Justice

**CLASS D FELONY PRETRIAL DIVERSION PROTOCOL
FOR THE POWELL CIRCUIT**



I. Definition

Pretrial diversion is the postponement of imposition of sentence upon any person who qualified for this program, for a period of time not to exceed five (5) years, subject to certain conditions established by the Court.

II. Persons Eligible

KRS 533.250

- A. Any person charged with a Class D felony, who has not had a felony conviction in the ten (10) years prior to commission of the current offense, or who has not been on felony probation or parole or released from felony incarceration within the ten (10) years prior to commission of the current offense, shall be eligible for pretrial diversion.
- B. The person charged must enter a plea of guilty, or a plea pursuant to North Carolina v. Alford, before becoming eligible for pretrial diversion.
- C. Persons ineligible for probation, parole or conditional discharge under KRS 532.045 shall be ineligible for this program.
- D. A person convicted of a Class D felony for which early release is disallowed by statute, including KRS 189A.010(8) and KRS 189A.120(2), shall be ineligible for this program.
- E. No person shall be eligible for this program more than once in any five (5) year period.

III. Procedure

- A. After indictment in Circuit Court, and no later than the pre-trial conference any person eligible for the program may apply to the Circuit Court and the Commonwealth for entry of a pretrial diversion order.
- B. The defense attorney will submit an application for pre-trial diversion to the Circuit Judge and the Commonwealth Attorney. In the application for pretrial diversion, counsel for the defendant must state, and the defendant must agree on the record, that in the event diversion is granted, any right to a speedy trial or disposition of the charge against him/her is waived.

- C. The Commonwealth shall make a written recommendation to the Court in response to each application. AOC Form 347, Styled Motion for Pre-trial Diversion of a Class D Felony shall be used for this purpose.
- D. Before making a recommendation to the Court, the Commonwealth shall:
 - 1. Have a criminal record check made by telephoning Pretrial Services at AOC at 1-800-928-6381, or faxing the request to (502) 573-1669. No such requests shall be made to the local Pretrial Service Officer.
 - 2. Interview and seek input from the victim and/or victim's family and advise them of the time, date and place the motion will be heard by the Court; and
 - 3. When diversion is recommended, the Commonwealth must make written recommendations to the Court of conditions for the pretrial diversion as well as the appropriate sentence to be imposed if the diversion agreement is unsuccessful. KRS 533.252(3).
 - 4. Have the Office of Probation and Parole prepare a partial pre-sentence investigation report.
- E. In the event the Commonwealth Attorney recommends diversion, AOC Form 347, Styled Motion for Pre-trial Diversion of a Class D Felony (which contains the recommendation of the Commonwealth and is signed by the defendant, defense attorney, and the Commonwealth Attorney) will be filed with the Circuit Court Clerk. The Commonwealth may withhold its recommendation pending completion of a partial presentence investigation.

IV. Order of Pretrial Diversion

- A. The Court may, in its discretion, order pretrial diversion for eligible petitioners upon terms and conditions it deems appropriate. AOC Form 345, styled Order Granting Pretrial Diversion of a Class D Felony, shall be used for this purpose.
- B. The Order of Diversion **shall** include:
 - 1. Restitution, where victim has suffered monetary damage.
 - 2. Whether the diversion shall be supervised or unsupervised (and include supervision fees, if applicable). In the event diversion is to be supervised, a monthly supervision fee of no less than \$10.00 or more than \$25.00 shall be imposed on the divertee.

3. Duration of the diversion.
 4. Requirement that the defendant obey all rules and regulations imposed by Probation & Parole.
 5. As required by KRS 533.030(1) [conditions of probation-restitution], Direction that the defendant not to commit any offense during the period of the pretrial diversion. The defendant shall be specifically directed to comply with any other provision of KRS 533.030 or any other condition the Court deems appropriate.
- C. The Order of Diversion **may** include the following:
1. That the defendant remain drug and alcohol free and be subject to random testing.
 2. That the defendant have no violation of the Penal Code or the Controlled Substance Act.
 3. That the defendant possess no firearm or any other deadly weapon.
- D. Duration of the pretrial diversion shall not exceed five (5) years without agreement of the petitioner. Duration of the diversion agreement shall not be less than the time required to make restitution in full.
- E. If the diversion agreement is accepted, the Court shall make a specific finding on the record that the defendant entered the plea AND entered into the diversion agreement voluntarily, freely, intelligently and understandingly.

If the plea agreement AND the diversion agreement are rejected, the Court shall notify the parties and advise the defendant he/she has the option of withdrawing the plea and proceeding to trial, OR maintaining the plea with the knowledge the Court will not order diversion but instead will impose a sentence within the penalty range permitted by law.

V. Voiding a Diversion Order

KRS 533.256

- A. After a hearing, with notice to the Commonwealth and to the defendant, the Court may void a person's participation in pretrial diversion upon a showing of failure to comply with the conditions of diversion or a failure to make satisfactory progress. AOC Form 346, styled Order Voiding Pretrial Diversion of a Class D Felony shall be used for this purpose.

- B. If an order of pretrial diversion is voided, the defendant shall be sentenced according to law, based on his or her prior plea of guilty/plea pursuant to North Carolina v. Alford. [A full PSI will be ordered and a sentencing hearing will be scheduled].
- C. Under KRS 533.256(2), the same criteria applicable to a probation revocation hearing applies to a proceeding to void an order granting diversion. Pursuant to KRE 1101(d)(5), the Rules of Evidence are inapplicable in miscellaneous proceedings such as those revoking probation. A proceeding to determine whether an order granting diversion should be voided also constitutes a miscellaneous proceeding and therefore the Rules of Evidence are inapplicable to such hearings.

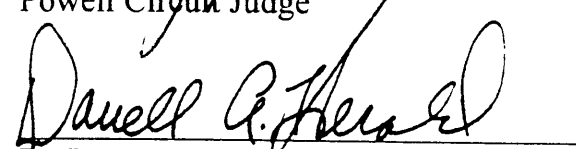
VI. Completion of Diversion Program

If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be dismissed. However, successful completion of a diversion contract does not result in automatic expungement of a criminal charge under KRS 431.076.

Approved, this the 29 day of November, 1999, by Larry Miller, Powell Circuit Judge, and Darrell A. Herald, Commonwealth's Attorney, to be effective immediately.



LARRY MILLER
Powell Circuit Judge



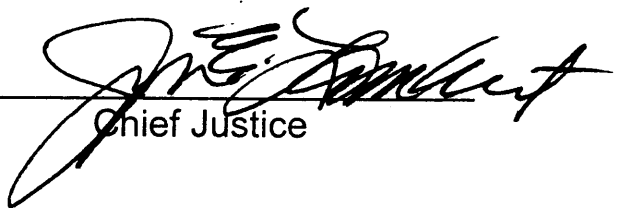
DARRELL A. HERALD
Commonwealth's Attorney

Supreme Court of Kentucky

ORDER

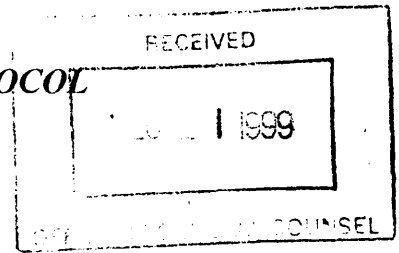
Pursuant to KRS 533.250, signed into law in May, 1998, the Pretrial Diversion Program for Class D Felons submitted by the Breathitt Circuit Court (which is part of the 39th Judicial Circuit) is hereby approved by the Kentucky Supreme Court and added to the Circuit's local rules.

Entered: 12/16/99



Chief Justice

**CLASS D FELONY PRETRIAL DIVERSION PROTOCOL
FOR THE BREATHITT CIRCUIT**



I. Definition

Pretrial diversion is the postponement of imposition of sentence upon any person who qualified for this program, for a period of time not to exceed five (5) years, subject to certain conditions established by the Court.

II. Persons Eligible

KRS 533.250

- A. Any person charged with a Class D felony, who has not had a felony conviction in the ten (10) years prior to commission of the current offense, or who has not been on felony probation or parole or released from felony incarceration within the ten (10) years prior to commission of the current offense, shall be eligible for pretrial diversion.
- B. The person charged must enter a plea of guilty, or a plea pursuant to North Carolina v. Alford, before becoming eligible for pretrial diversion.
- C. Persons ineligible for probation, parole or conditional discharge under KRS 532.045 shall be ineligible for this program.
- D. A person convicted of a Class D felony for which early release is disallowed by statute, including KRS 189A.010(8) and KRS 189A.120(2), shall be ineligible for this program.
- E. No person shall be eligible for this program more than once in any five (5) year period.

III. Procedure

- A. After indictment in Circuit Court, and no later than the pre-trial conference any person eligible for the program may apply to the Circuit Court and the Commonwealth for entry of a pretrial diversion order.
- B. The defense attorney will submit an application for pre-trial diversion to the Circuit Judge and the Commonwealth Attorney. In the application for pretrial diversion, counsel for the defendant must state, and the defendant must agree on the record, that in the event diversion is granted, any right to a speedy trial or disposition of the charge against him/her is waived.

- C. The Commonwealth shall make a written recommendation to the Court in response to each application. AOC Form 347, Styled Motion for Pre-trial Diversion of a Class D Felony shall be used for this purpose.
- D. Before making a recommendation to the Court, the Commonwealth shall:
 - 1. Have a criminal record check made by telephoning Pretrial Services at AOC at 1-800-928-6381, or faxing the request to (502) 573-1669. No such requests shall be made to the local Pretrial Service Officer.
 - 2. Interview and seek input from the victim and/or victim's family and advise them of the time, date and place the motion will be heard by the Court; and
 - 3. When diversion is recommended, the Commonwealth must make written recommendations to the Court of conditions for the pretrial diversion as well as the appropriate sentence to be imposed if the diversion agreement is unsuccessful. KRS 533.252(3).
 - 4. Have the Office of Probation and Parole prepare a partial pre-sentence investigation report.
- E. In the event the Commonwealth Attorney recommends diversion, AOC Form 347, Styled Motion for Pre-trial Diversion of a Class D Felony (which contains the recommendation of the Commonwealth and is signed by the defendant, defense attorney, and the Commonwealth Attorney) will be filed with the Circuit Court Clerk. The Commonwealth may withhold its recommendation pending completion of a partial presentence investigation.

IV. Order of Pretrial Diversion

- A. The Court may, in its discretion, order pretrial diversion for eligible petitioners upon terms and conditions it deems appropriate. AOC Form 345, styled Order Granting Pretrial Diversion of a Class D Felony, shall be used for this purpose.
- B. The Order of Diversion **shall** include:
 - 1. Restitution, where victim has suffered monetary damage.
 - 2. Whether the diversion shall be supervised or unsupervised (and include supervision fees, if applicable). In the event diversion is to be supervised, a monthly supervision fee of no less than \$10.00 or more than \$25.00 shall be imposed on the divertee.

3. Duration of the diversion.
 4. Requirement that the defendant obey all rules and regulations imposed by Probation & Parole.
 5. As required by KRS 533.030(1) [conditions of probation-restitution], Direction that the defendant not to commit any offense during the period of the pretrial diversion. The defendant shall be specifically directed to comply with any other provision of KRS 533.030 or any other condition the Court deems appropriate.
- C. The Order of Diversion may include the following:
1. That the defendant remain drug and alcohol free and be subject to random testing.
 2. That the defendant have no violation of the Penal Code or the Controlled Substance Act.
 3. That the defendant possess no firearm or any other deadly weapon.
- D. Duration of the pretrial diversion shall not exceed five (5) years without agreement of the petitioner. Duration of the diversion agreement shall not be less than the time required to make restitution in full.
- E. If the diversion agreement is accepted, the Court shall make a specific finding on the record that the defendant entered the plea AND entered into the diversion agreement voluntarily, freely, intelligently and understandingly.

If the plea agreement AND the diversion agreement are rejected, the Court shall notify the parties and advise the defendant he/she has the option of withdrawing the plea and proceeding to trial, OR maintaining the plea with the knowledge the Court will not order diversion but instead will impose a sentence within the penalty range permitted by law.

V. Voiding a Diversion Order

KRS 533.256

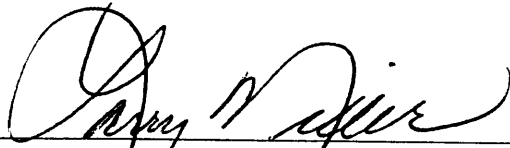
- A. After a hearing, with notice to the Commonwealth and to the defendant, the Court may void a person's participation in pretrial diversion upon a showing of failure to comply with the conditions of diversion or a failure to make satisfactory progress. AOC Form 346, styled Order Voiding Pretrial Diversion of a Class D Felony shall be used for this purpose.

- B. If an order of pretrial diversion is voided, the defendant shall be sentenced according to law, based on his or her prior plea of guilty/plea pursuant to North Carolina v. Alford. **[A full PSI will be ordered and a sentencing hearing will be scheduled]**.
- C. Under KRS 533.256(2), the same criteria applicable to a probation revocation hearing applies to a proceeding to void an order granting diversion. Pursuant to KRE 1101(d)(5), the Rules of Evidence are inapplicable in miscellaneous proceedings such as those revoking probation. A proceeding to determine whether an order granting diversion should be voided also constitutes a miscellaneous proceeding and therefore the Rules of Evidence are inapplicable to such hearings.

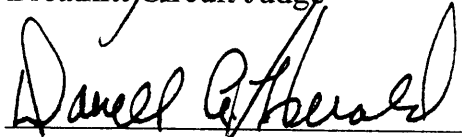
VI. Completion of Diversion Program

If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be dismissed. However, successful completion of a diversion contract does not result in automatic expungement of a criminal charge under KRS 431.076.

Approved, this the 29 day of November, 1999, by Larry Miller, Breathitt Circuit Judge, and Darrell A. Herald, Commonwealth's Attorney, to be effective immediately.



LARRY MILLER
Breathitt Circuit Judge

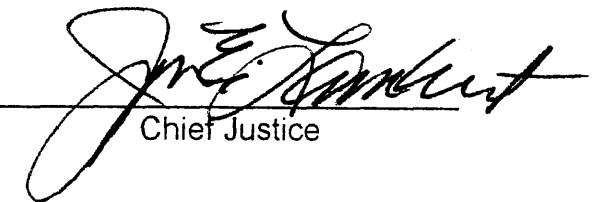


DARRELL A. HERALD
Commonwealth's Attorney

Supreme Court of Kentucky

ORDER

Pursuant to KRS 533.250, signed into law in May, 1998, the Pretrial Diversion Program for Class D Felons submitted by the Wolfe Circuit Court (which is part of the 39th Judicial Circuit) is hereby approved by the Kentucky Supreme Court and added to the Circuit's local rules. This rule shall remain in effect so long as Judge John David Caudill serves as a Special Judge in the Wolfe Circuit Court.


Chief Justice

Entered:

November 29, 1999

***CLASS D FELONY PRETRIAL DIVERSION PROTOCOL
FOR THE WOLFE CIRCUIT***

I. Definition

Pretrial diversion is the postponement of imposition of sentence upon any person who qualified for this program, for a period of time not to exceed five (5) years, subject to certain conditions established by the Court.

II. Persons Eligible

KRS 533.250

- A. Any person charged with a Class D felony, who has not had a felony conviction in the ten (10) years prior to commission of the current offense, or who has not been on felony probation or parole or released from felony incarceration within the ten (10) years prior to commission of the current offense, shall be eligible for pretrial diversion.
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 - 3. When diversion is recommended, the Commonwealth must make written recommendations to the Court of conditions for the pretrial diversion as well as the appropriate sentence to be imposed if the diversion agreement is unsuccessful. KRS 533.252(3).
 - 4. Have the Office of Probation and Parole prepare a partial pre-sentence investigation report.
- E. In the event the Commonwealth Attorney recommends diversion, AOC Form 347, Styled Motion for Pre-trial Diversion of a Class D Felony (which contains the recommendation of the Commonwealth and is signed by the defendant, defense attorney, and the Commonwealth Attorney) will be filed with the Circuit Court Clerk. The Commonwealth may withhold its recommendation pending completion of a partial presentence investigation.

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- E. If the diversion agreement is accepted, the Court shall make a specific finding on the record that the defendant entered the plea AND entered into the diversion agreement voluntarily, freely, intelligently and understandingly.

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V. **Voiding a Diversion Order**

KRS 533.256

- A. After a hearing, with notice to the Commonwealth and to the defendant, the Court may void a person's participation in pretrial diversion upon a showing of failure to comply with the conditions of diversion or a failure to make satisfactory progress. AOC Form 346, styled Order Voiding Pretrial Diversion of a Class D Felony shall be used for this purpose.

- B. If an order of pretrial diversion is voided, the defendant shall be sentenced according to law, based on his or her prior plea of guilty/plea pursuant to North Carolina v. Alford. [A full PSI will be ordered and a sentencing hearing will be scheduled].
- C. Under KRS 533.256(2), the same criteria applicable to a probation revocation hearing applies to a proceeding to void an order granting diversion. Pursuant to KRE 1101(d)(5), the Rules of Evidence are inapplicable in miscellaneous proceedings such as those revoking probation. A proceeding to determine whether an order granting diversion should be voided also constitutes a miscellaneous proceeding and therefore the Rules of Evidence are inapplicable to such hearings.

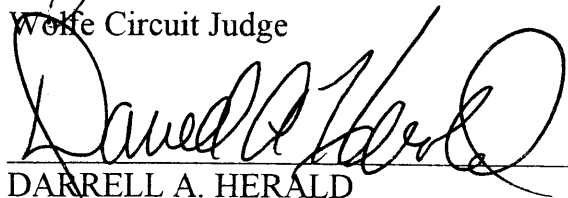
VI. Completion of Diversion Program

If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be dismissed. However, successful completion of a diversion contract does not result in automatic expungement of a criminal charge under KRS 431.076.

Approved, this the 14th day of Nov, 1999, by John David Caudill, Wolfe Circuit Judge, and Darrell A. Herald, Commonwealth's Attorney, to be effective immediately.



JOHN DAVID CAUDILL
Wolfe Circuit Judge



DARRELL A. HERALD
Commonwealth's Attorney